Alberta Women's Bureau
INFORMATION

A CHILD'S LAWYER:
LEGAL COUNSEL, CHILDREN AND DIVORCE

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Alberta
WOMEN'S BUREAU

A CHILD'S LAWYER

Legal Counsel, Children and Divorce

INTRODUCTION

Determining the fate of children caught up in divorce proceedings is often best done with the help of impartial legal counsel. Alberta's decade of experience in using such counsel and the ways it is available to you are described below.

DIVORCE AND CHILDREN

In the drama of divorce, facts and feelings are nowhere more uncertain than those concerning the children of the estranged couple. With whom will they live? Where will they live? Will they ever see their daddy or their mommy again? And, most poignant of all, each child wonders, "What did I do that was so bad that my daddy can't see me again?"

In most divorces, property is fought over, maintenance is fought over and children are fought over. However, children are human beings. Don't they have some right to speak out when their future is being determined by a court of law? Can parents, whose own emotions are running high, truly and objectively help a court decide what is best for their children? How many parents have the courage to admit that their own children should live with someone else?

In Alberta, the issues raised by these questions have been considered for more than a decade. In 1966, in the first Alberta decision of its kind, Mr. Justice Manning of the Supreme Court of Alberta ordered that a separate lawyer be appointed to represent the interests of two children whose parents were battling over their custody. Mr. Justice Manning termed this lawyer an amicus curiae, which is literally translated as a "friend of the court". He pointed out that:

> Counsel for the disputing parents must obviously take instructions from their clients and some matters concerning the best interests of the children may be overlooked in the conflict between the parents.

Since this decision, the use of an amicus curiae in disputes over custody and access has grown. At present, an amicus curiae may be appointed in one of two ways:

1. from legal counsel employed by the Alberta government, or

2. from among lawyers in private practice in the province.

THE ALBERTA GOVERNMENT AMICUS CURIAE

The Civil Law Division of the Department of the Attorney General is responsible for amicus curiae referrals made to the Alberta government. Parents disputing child custody or access may apply through their lawyer to request the Civil Law Division to appoint an amicus curiae.

This solicitor engages the assistance of other professionals -- including social workers, child psychologists or psychiatrists -- to help determine what the submission to the court will be. The solicitor's own opinion, along with these reports, is presented to the court, which will then make its own decision about the child's best interests.

The only charge for the services outlined above are for disbursements in the event the case demands travel outside the province, extensive travel within Alberta or the services of a psychologist or psychiatrist. Parties unable to pay these costs may apply for assistance to:

Legal Aid Society of Alberta

401 Melton Building
10310 Jasper Avenue
Edmonton, Alberta
T5J 2N4
Telephone: 427-7575

Some information and assistance can also be obtained from:

The Family Law Project
Student Legal Services
Law Centre
University of Alberta
Edmonton, Alberta
T6G 2H5
Telephone: 432-2701 or 432-2702

Parties interested in engaging the services of the Alberta government's amicus curiae may contact:

Civil Law Division
Department of the
Attorney General
Madison Building
9919 - 105 Street
Edmonton, Alberta
T5K 2E8
Telephone: 427-8340

You may dial this office toll-free by calling your R.I.T.E. (Regional Information Telephone Enquiry) Number which is listed in the white pages of the telephone directory under the heading Government of Alberta.

A PRIVATE COUNSEL AMICUS CURIAE

Parties to a divorce, who engage a lawyer in private practice as amicus curiae, will be required to pay fees and costs in addition to those of the child psychologist or psychiatrist. Parents unable to afford these costs may apply for assistance through Legal Aid.

There is another difference between the private sector and the public sector amicus curiae: the former may actually conduct the study to determine custody and access, whereas the latter leaves the matter entirely to the outside professionals engaged in the case.

CONCLUSION

Please remember that the use of an amicus curiae in divorces involving children is not compulsory. However, we do suggest that an amicus curiae is the most objective means of determining the child's best interests.